Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	WC Docket No. 02-112
	)	
	)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	CC Docket No. 00-175

REPLY COMMENTS OF AT&T CORP.

Leonard J. Cali
Lawrence J. Lafaro
Stephen C. Garavito
James J.R. Talbot
Aryeh S. Friedman

AT&T Corp.
One AT&T Way
Bedminster, N.J. 07921
(908) 532-1847

July 28, 2003

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	WC Docket No. 02-112
	)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	CC Docket No. 00-175

REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") respectfully submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

SUMMARY

Because the Bell Operating Companies ("BOCs") still control the local exchange and exchange access facilities upon which competitive long distance carriers ("IXCs") must rely, the BOCs should be regulated as dominant carriers when they provide in-region long distance services on an integrated basis after sunset of section 272. Commission precedent and basic economic principles mandate dominant carrier regulation of all carriers with market power, which the BOCs indisputably possess by virtue of their control of bottleneck facilities they can -- and do -- use to raise long distance rivals' costs and thereby restrict total output. For these

[1] FCC 03-111 (rel. May 19, 2003) ("Notice").

reasons, the answer to the issue before the Commission in this rulemaking is straightforward, as AT&T and other competitive carriers show in their comments.

AT&T has demonstrated that the same result is required by the *LEC Classification Order*.[2] The Commission reasoned in that order that, although the BOCs control bottleneck facilities and consequently have market power, their long distance affiliates should be treated as nondominant because section 272, together with other regulatory and market safeguards, would prevent harm to long distance competition. The Commission underscored: "*We emphasize that our decision to accord non-dominant treatment to the BOCs' provision of in-region interLATA services is predicated upon their full compliance with the structural, transactional and non-discrimination requirements of section 272 and our implementing rules*."[3] That same analysis now requires the BOCs to be treated as dominant carriers when they provide local and long distance services through the same entity after the sunset of section 272.

BOC market power over local bottlenecks remains largely unchanged since 1997, and the sunset of section 272 removes virtually all the structural, transactional and nondiscrimination safeguards that were the critical predicates to the Commission's 1997 nondominance decision. Moreover, other regulatory safeguards and market factors found by the *LEC Classification Order* to help prevent the abuse of BOC market power also have been removed or shown to be ineffective. The application of the *LEC Classification Order* analysis to these fundamentally different circumstances compels the conclusion that BOCs providing in-

[2] Second Report and Order, *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area,* 12 FCC Rcd. 15756, ¶¶ 83, 158-61 (1997) ("*LEC Classification Order*"), unrelated provisions modified, Order on Reconsideration, *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area,* 12 FCC Rcd. 8730 (1997).

[3] *Id*., ¶ 134 (emphasis added).

region long distance services on an integrated basis after the sunset of section 272 should be subject to dominant carrier regulation. Indeed, D.C. Circuit precedent requires the Commission to revise its prior conclusion that the existence of other safeguards allowed nondominant treatment of BOC long distance affiliates, to reflect the very different circumstances that apply after sunset of section 272 and in light of the various other regulatory and market changes since 1997.[4]

Other than Qwest's blanket denial that section 272 played any key role in the 1997 decision -- which is expressly contradicted by the language from the *LEC Classification Order* quoted above -- the BOCs fail to address this analysis. Instead, they rely primarily on the Commission's 1995 nondominance finding concerning AT&T and contend they are subject to the same market constraints that prevented AT&T from raising long distance prices above competitive levels. Critically, they ignore the key factor distinguishing AT&T from the BOCs and the primary basis for the Commission's finding that AT&T lacked market power -- "AT&T no longer own[ed] bottleneck facilities" and had not done so since the break-up of the Bell System ten years beforehand.[5] Consequently, unlike the BOCs today, AT&T controlled *no* facilities or other resources in 1995 that its competitors required to offer services and had no ability to raise their costs. Unless the BOCs are prepared to accept all of the substantive attributes that characterized AT&T in 1995 -- notably, the complete divestiture of all bottleneck local service network facilities -- the *AT&T Reclassification Order* has no relevance here.

AT&T and other competitive carriers demonstrate in their comments that there has been no meaningful reduction in BOC and independent LEC control of local bottlenecks,

[4] *See Bechtel v. FCC*, 957 F.2d 873,881 (D.C. Cir. 1992).

even years after the award of section 271 relief. In particular, 96 percent of all switched access lines are served by ILECs or by CLECs using ILEC-provided facilities, UNE competition has made limited progress and has even levelled off in both New York and Texas, where 272 has sunset, and ILEC special access facilities remain essential inputs not only for IXCs but also for suppliers of local, wireless and broadband services.

BOC claims that intermodal competition from wireless and Internet-based services, such as e-mail, Instant Messaging and voice over IP, prevents wireline providers from raising price fail to recognize that these services are also largely dependent on access to ILEC local bottlenecks. Consequently, as AWS underscores, providers of intermodal services like wireless are also highly vulnerable to ILEC abuse of their local bottlenecks to raise rivals' costs and thereby reduce competition. Moreover, very few wireless customers are abandoning their wireline phones, voice over IP is in its infancy and -- in its most competitive form -- requires broadband Internet access, and non-voice Internet-based services do not provide close demand substitutes for most wireline long distance calls.

There also is no substance to BOC claims that abuse of the local bottleneck is prevented by other Commission safeguards, or is otherwise unlikely. AT&T and other competitive carriers provide extensive evidence that the BOCs have used their local bottlenecks to harm long distance competition. BOCs have engaged in both types of price squeezes previously highlighted by the Commission -- by raising special access prices, and by lowering long distance rates below switched access prices. The BOCs have also misallocated costs to cross-subsidize their long distance services and engaged in discrimination against their

[5] *See, e.g.*, Order, *Motion of AT&T to be Reclassified as a Non-Dominant Carrier,* 11 FCC Rcd. 3271, ¶ 32 (1995) (*"AT&T Reclassification Order")*.

competitors. This misconduct is facilitated by the fast-growing popularity of bundled packages of local and long distance services now purchased by 40 percent of households. Moreover, BOCs' separate long distance affiliates have gained market share at an unprecedented rate, and SBC has told investors it expects to exceed 60 percent in all its section 271 jurisdictions.

Contrary to BOC claims concerning the supposedly "irrational" nature of predatory conduct, a recent Deutsche Bank wireline industry report relied upon by the economists retained by Qwest, SBC and Verizon explains the "method in the madness" of low BOC long distance pricing.[6] Specifically, Deutsche Bank states that "*the RBOCs have the incentive to completely commoditize the long distance value proposition in the interests of defending their higher value local exchange franchise*."[7] Deutsche Bank further states that because "neither UNE providers, independent wireless, DSL operators nor cable MSOs have anything approaching the RBOCs' financial capacity or customer reach, *[i]n the game of 'last man standing,' the RBOCs will be that man*."[8]

Dominant carrier regulation is clearly necessary in this environment to prevent the BOCs from leveraging their local bottlenecks to remonopolize the U.S. long distance industry. Competitive carriers emphasize that the transparency provided by the dominant carrier tariff filing requirement provides an essential safeguard against unreasonable and discriminatory charges where market power is present. The public interest in the application of dominant carrier regulation to prevent leverage of BOC market power over local bottlenecks into the long

[6] Deutsche Bank Securities Inc., *Last Man Standing*, Wireline Mid Year Review, May 27, 2003, at 100. *See* Carlton, Sider & Shampine Dec. at 13, 15, 25-26 (citing this study). *See also*, SBC at 27 (citing Deutsche Bank study).

[7] *Id*. (emphasis added).

[8] *Id.* at 4 (emphasis added).

distance market thus plainly outweighs any resulting burdens -- particularly as such regulation is necessary only pending the adoption of other reforms to remove or limit the BOCs' ability to harm long distance competition in this way. Further, as AT&T has shown, U.S. trade commitments under the WTO Reference Paper require the Commission to maintain "appropriate competitive safeguards" to prevent anticompetitive practices by "major suppliers" controlling bottleneck facilities.

Because other regulatory safeguards against BOC bottleneck abuse have been removed or shown to be ineffective, dominant carrier regulation is now the minimum "appropriate competitive safeguard" available to deter and detect BOC anticompetitive conduct until the Commission completes reforms to prevent incumbent leverage of the local bottleneck. The following reforms are necessary. First, the BOC access cost advantage provided by the current system of interstate and intrastate switched access rates should be removed to prevent price squeezes and end IXC subsidization of their BOC long distance competitors. For the same reasons, meaningful regulatory constraints on BOC special access rates should be introduced. Second, to prevent special access non-price discrimination, the Commission should adopt strong special access performance measures, supported by meaningful penalties for non-compliance. Third, an independent "PIC" administrator is required to stop ongoing abuses of the PIC process, together with greater limits on BOC joint marketing.

As AT&T has described, the full implementation of these reforms would provide a basis to revisit the dominant status of BOC interLATA services by diminishing the BOCs' ability to leverage the local bottleneck, although they would not provide all the safeguards provided by section 272 or by dominant carrier regulation. Any nondominant treatment of BOC long distance services before that point would be highly premature and would have devastating results on U.S. long distance competition.

Lastly, the independent LECs still have the ability and incentive to leverage their local bottlenecks into the long distance market and, therefore, should continue to be subject to separation requirements for their long distance services. Continued nondominant treatment is warranted if independent LECs remain subject to these separation requirements, because these carriers are generally less likely than BOCs to engage in anticompetitive conduct.

I. ILECS POSSESS MARKET POWER IN LONG DISTANCE SERVICES BECAUSE OF THEIR CONTINUING CONTROL OF THE LOCAL BOTTLENECK .

The comments demonstrate that the key concern in this proceeding is the ability of the ILECs to leverage their local bottlenecks into downstream long-distance markets following sunset of section 272. Competitive carriers and users make clear that because there has been no meaningful diminution in ILEC market power over local exchange and exchange access, incumbent carriers have both the incentive and the ability to use that market power to harm long-distance competition if they provide long-distance services on an integrated basis. The critical nature of this concern is amply demonstrated by the thirty-year history of U.S. telecommunications competition -- notably by the break-up of the former Bell System for this very reason -- and by the recent examples of BOC price squeezes, discrimination and cost misallocation described in competitive carriers' comments.

Most incumbents do not dispute their continued control of the local bottleneck, yet contend that their integrated long-distance services should receive nondominant treatment because AT&T was found nondominant in 1995 -- while ignoring that a primary basis of that decision was that AT&T did not control bottleneck facilities and had not done so for more than ten years. There also is no basis to incumbent claims that competition in long-distance markets is alone sufficient to prevent any exercise of their market power. The comments make clear that ILEC local facilities remain critical inputs in all wireline and wireless long-distance services and, therefore, would allow the incumbents to raise price by raising rivals' costs following sunset of section 272.

1. <u>The ILECs Retain Overwhelming Market Power Over Local Bottlenecks.</u>

Incumbent carriers continue to control virtually all local facilities and thus retain market power over critical inputs for wireline and wireless long-distance services. As AT&T has demonstrated (pp. 14-15), no CLEC or IXC can hope to replicate the incumbents' vast and ubiquitous networks. The most recent *FCC Local Competition Report* shows that 96 percent of all switched access lines are served directly by ILECs or by CLECs using ILEC-provided facilities to compete through resale or UNE-based services.[9] Furthermore, the growth of CLEC competition appears to have leveled off in both states where section 272 has already sunset, with total CLEC market shares showing no percentage increase in New York from December 2001 through December 2002 and only a one point increase in Texas during this period.[10]

In the vast majority of cases, there also are no alternatives to the ILEC special access facilities that are essential inputs not only for IXCs but also for suppliers of local, wireless

[9] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition Status as of December 31*, 2002, June 2003, Tables 1, 3 & 4. Only 2 percent of residential lines use cable telephony and only 10-15 percent of U.S. homes are even cable telephony ready. Selwyn Reply Dec., ¶ 15, quoting Merrill Lynch, BellSouth Corp., Jan. 27, 2003, at 4.

[10] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition Status as of December 31*, 2002, June 2003 at Table 7. *See also*, AT&T at 17; Sprint at 6. The Deutsche Bank study relied upon by the Qwest/SBC/Verizon economists expects that "by the time UNE penetrates around 10-15% of lines, the reseller model should start

(continued . . .)

and broadband services.[11] Sprint (p. 8) confirms that only about 4 percent of commercial buildings are served by CLEC-provided special access facilities. As AT&T has described (p. 20), BOC claims like those made by Verizon concerning the existence of "pervasive" competition in the provision of special access facilities overlook the fact that CLEC providers of special access are themselves critically dependent on the purchase of ILEC special access facilities.[12] The similar claims by BellSouth (p. 13) are equally flawed, because they rest on the erroneous assumption that there is a 30 percent chance that a competitive LEC serves any building, when in fact under 5 percent are served in this way.[13]

Even where CLEC-owned special access facilities exist, they are not fungible from one location to another and therefore cannot provide an effective constraint on ILEC price increases.[14] AHTUC aptly observes (p. 11) that "firms in truly competitive markets would not be able to raise prices and collect supracompetitive profits as the BOCs have done for special access prices without attracting competitors who would be able to take away customers by charging fully compensatory but far lower prices."

Equally unfounded are claims like those made here by BellSouth (p. 27) that UNEs restrain ILEC market power over long-distance inputs. The assumption made by the *LEC Classification Order* -- upon which the Commission in part based its nondominant treatment of

---

running out of steam." Selwyn Reply Dec. ¶ 14, quoting Deutsche Bank Securities Inc., *Last Man Standing*, Wireline Mid Year Review, May 27, 2003, at 23.

[11] AT&T at 19-21.

[12] *See* AT&T Special Access Reply Comments, RM No. 10593, filed Jan. 23, 2003, at 13 (AT&T uses its own facilities to serve only 3.6 percent of the 186,135 buildings to which it provides special access based service).

[13] Reply Comments of WorldCom, Inc., CCF Docket No. 01-321, filed Feb. 12, 2002, at 4.

[14] AT&T at 22.

BOC long-distance affiliates in that order -- that competitive IXCs could "acquire access through the purchase of unbundled network elements"[15] has been largely eliminated by subsequent Commission determinations that IXCs may only use UNEs for long distance access to their own local customers, and by further restrictions that prevent the conversion of BOC special access circuits to UNEs.[16] Therefore, contrary to the claim by ITTA (p. 10), even CLECs that are also IXCs may "eliminat[e] any reliance on LEC-provided interstate access services" only on the relatively infrequent occasions on which they are the local service provider at both the originating and terminating end of the call. [17]

Additionally, as AT&T has described (p. 65), it is now much more likely that a call will both originate and terminate on a particular BOC's network as the result of the SBC-Pacific Telesis-Ameritech-SNET and Bell Atlantic-NYNEX-GTE mergers, thus increasing these

---

[15] *LEC Classification Order*, ¶ 126. *See also*, *id*., ¶ 130 ("As noted, we believe that the ability of competing carriers to acquire access through the purchase of unbundled elements enables them to avoid originating access charges, and thus partially protect themselves against a price squeeze").

[16] AT&T at 61-62; Supplemental Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 15 FCC Rcd. 1760, ¶ 2, (1999); Supplemental Order Clarification, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 15 FCC Rcd. 9587 (2000). *See also*, AWS at 13; AT&T Reply Comments, (filed Jan. 23, 2003), RM No. 10593, at 51-52.

[17] Moreover, despite its advocacy, Verizon has sought to eliminate the ability of UNE-based CLECs to provide their own access, and thereby avoid above-cost ILEC access. On July 1, 2003, Verizon petitioned the Commission to forbear, on an expedited basis, from among other things, "its current rule that UNE-P carriers are entitled to collect per-minute access charges from IXCs for the provision of exchange access service." Petition for Expedited Forbearance of the Verizon Telephone Companies, WC Docket No. 03-157, filed Jul. 1, 2003, at 14. In Verizon's view, the underlying ILEC – and not the CLEC – should be able to assess and collect access charges for calls originating from and terminating to the end user. *Id.* at 14-15. Notably, Verizon made that filing the very next day after filing its comments here contending (pp. 16-17) that "[c]ompetition in the access market is *even better established* than in the local exchange market," and that "concerns about leveraging of control over local exchange and exchange access" are unwarranted because, among other things, a CLEC using UNEs is "a competitive provider of switched access." (Emphasis added.)

incumbents' cost advantages -- and diminishing this price squeeze safeguard relied upon by the *LEC Classification Order*.

UNE-based competition has been greatly limited by the BOCs' high UNE rates and poor provisioning. Moreover, as noted by MCI (p. 13) and Sage (pp. 17-20), UNE-based competition has been subject to unrelenting attack by the incumbent carriers in every possible forum, including most recently SBC-sponsored Illinois legislation mandating huge increases in UNE rates, and BOC efforts to persuade Congress to amend the FCC Reauthorization Act to require the Commission to reexamine the TELRIC pricing standard. The BOCs no doubt will continue their incessant efforts to remove UNE-based CLEC competition in the state-by-state impairment proceedings that are to follow the Commission's February 2003 Triennial Review decision.

2. Commission Precedents Make Clear That Control of Bottleneck Facilities Confers Market Power.

Commission rules require dominant carrier regulation of any carrier that can exercise market power in a relevant market, and the *LEC Classification Order* and other Commission precedents make clear that an entity that controls bottleneck facilities that are key inputs into a finished service has the ability to exercise market power over that downstream service.[18] Consequently, the Commission's dominance/nondominance determinations have

[18] AT&T at 8-9; 47 C.F.R. §§ 61.3(q), 61.31; *LEC Classification Order*, ¶ 134; First Report & Order and Further Notice of Proposed Rulemaking, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd. 21,905, ¶¶ 9-13 (1996) ("*Non-Accounting Safeguards Order*"); Memorandum Opinion and Order, *In re Applications of Ameritech, Transferor and SBC, Transferee,* 14 FCC Rcd. 14712, ¶¶ 186, 196-97 ("*SBC-Ameritech Merger Order*"). *See also*, Notice ¶ 5 n.10 (citing *LEC Classification Order* ¶¶ 83, 158-61); 47 CFR §. 63.10; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, ¶ 161 (1997) ("*Foreign Participation Order*").

routinely examined whether control of bottleneck inputs could be used to impede competition in downstream markets.[19] Consistent with this approach, the Commission concluded in the *LEC Classification Order* that "a local exchange carrier's control of the local bottleneck constitutes credible evidence that there could be a lack of competitive performance in point-to-point markets that originate in-region,"[20] and declined to regulate BOC long-distance affiliates as dominant only because it found that other safeguards would prevent the BOCs from exercising their market power on behalf of their affiliates.[21]

The incumbents argue for a finding of non-dominance substantially based on the factors considered in the *AT&T Reclassification Order*,[22] but ignore the primary basis for that Commission determination -- that AT&T "no longer own[ed] bottleneck local access facilities" as the result of the break-up of the Bell System more than ten years earlier.[23] As Dr. Selwyn underscores, in 1995, "AT&T had been completely divested from the BOCs, *and controlled no network elements or other resources* that its long distance rivals required in order to provide

---

[19] *See, e.g.*, *AT&T Reclassification Order*, ¶ 32; Order, Authorization and Certificate, *In the Matter of British Telecom North America,* 12 FCC Rcd. 1985, ¶ 7 (1997); Memorandum Opinion and Order, *Merger of MCI Communications and British Telecommunications,* 12 FCC Rcd. 15351, ¶ 286, (1997); Memorandum Opinion and Order, *Application of WorldCom and MCI Communications for Transfer of Control of MCI Communications to WorldCom,* 13 FCC Rcd. 18025, ¶¶ 41-2, (1998).

[20] *LEC Classification Order*, ¶ 76.

[21] AT&T at 2, 56-66.

[22] SBC at iv,14, 17, 23-37; Verizon at 21-27; Carlton, Sider & Shampine Dec. at 8-26.

[23] *AT&T Reclassification Order* ¶¶ 32, 69-70. *See also, id*., ¶ 14 ("AT&T states that market conditions have changed dramatically since it was classified as dominant and that it no longer meets the criteria for dominance established in our previous orders. Specifically, AT&T argues that it no longer owns or controls any bottleneck facilities.")

competing services."[24] Therefore, AT&T had no ability to raise its rivals' costs, and could have exercised market power only if it could raise prices by unilaterally restricting it own output.

Very different facts apply to the ILECs. Even if an ILEC could not raise prices by unilaterally restricting its own output, the *LEC Classification Order* affirmed -- consistent with longstanding Commission and antitrust precedent -- that bottleneck facilities give it the ability to exercise market power in myriad other ways.[25] The ILECs can raise their rivals' costs and restrict their rivals' output by denying access to essential inputs and by engaging in cross-subsidization, price squeezes, and discriminatory provisioning.[26] Under the Commission's

---

[24] Selwyn Reply Dec., ¶ 9. AT&T also had no significant presence in the intraLATA toll market in 1995 and, because it did not provide local exchange services, had no ability to bundle local and long distance services into a single pricing and service package. *Id.* Dr. Selwyn further notes that "[I]f the 1995 condition of AT&T is to serve as a basis for assessing the BOCs' dominance vs. non-dominance at the present time, then the BOCs must be prepared to accept and adopt for themselves *all* of the substantive attributes that characterized AT&T in 1995." *Id.*, ¶ 3. Specifically, "They would need to forego joint marketing and bundling of local and long distance services. They would need to accept balloting for diversification of local service shares. They would need to accept separate ownership of their long distance and local exchange service businesses." Otherwise, "there is no basis for or merit to the suggestion that the factors considered by the Commission when conferring non-dominant status upon AT&T have any relevance to the appropriate policy for the BOCs." *Id.*

[25] *LEC Classification Order*, ¶ 134.

[26] *Id.* *See also*, Selwyn Reply Dec., ¶ 49 ("Unlike the post divestiture AT&T, the BOCs' integrated provision of local and long distance service (especially while access charges remain priced at multiples of costs) affords them with a unique competitive advantage over competing stand-alone IXCs. . . BOCs are able effectively to ignore the imputation of access charges, gain significant market share for a tiny fraction of the sales and marketing costs confronting stand-alone rivals by exploiting their legacy relationships with monopoly local service customers, and avoid significant billing and customer care costs by 'piggy-backing' them onto existing ILEC functions and assigning virtually all joint local/long distance costs to their monopoly local service operations.") *See also, e.g., id.*, ¶ 8 ("AT&T is required to pay cash out-of-pocket to originate and terminate all long distance calls that it carries from and/or to ILEC customers. BOCs, by contrast, at best make non-cash transfer payments *to themselves* for *all* originating access charges and for a substantial portion – perhaps in excess of 50% – of terminating access charges associated with long distance calls provided by BOC long distance affiliates to BOC customers.")

precedents, these facts are dispositive and make clear that the BOCs have market power that may be used to harm long distance competition.

3. The Commission Should Continue to Conduct Separate Analysis of In-Region, In-Footprint Markets.

The comments fail to justify any change in the Commission's finding in the *LEC Classification Order* that "calls originating from in-region point-to-point markets should be analyzed separately from calls originating from out-of-region point-to-point markets."[27] Consumers can use only the services available where their homes and businesses are located, and it is in those particular areas that the ILECs can leverage their local bottlenecks. The Commission properly emphasized in the *LEC Classification Order* that "a local exchange carrier's control of the local bottleneck constitutes credible evidence that there could be a lack of competitive performance in point-to-point markets that originate in-region."[28] Because of this in-region "competitive advantage," the Commission determined that a BOC was likely to "compete differently in-region than out-of-region," resulting in different competitive conditions that required separate analysis of in-region and out-of-region markets.[29]

The incumbents do not show that any broader geographic market is applicable here, and SBC (p. 14) assumes that the relevant market is "in-region only." Claims by the Qwest/SBC/Verizon economists (p. 14) that geographic price averaging and the ability of BOCs to enter out-of-region markets indicate the need for broader markets are refuted by the Commission's former finding that geographic rate averaging would not necessarily offset the

---

[27] *LEC Classification Order*, ¶ 76.

[28] *Id.*

[29] *Id* & n. 205.

anticompetitive effects of the leveraging of ILEC local bottlenecks.[30] Of course, notwithstanding their theoretical ability to enter out-of-region markets, the BOCs have notably refrained from doing so in any meaningful way.[31] Indeed, SBC does not even offer long-distance services within its region to customers of other LECs or CLECs.[32]

4. Intermodal Competition Fails To Eliminate ILEC Bottlenecks.

Incumbent claims that intermodal competition from wireless services, e-mail and instant messaging prevents any wireline provider from raising long distance prices fail to recognize that wireless and Internet services are largely dependent on access to ILEC local bottlenecks.[33] First, the comments affirm that the ILECs have bottleneck control over essential inputs for wireless services -- the chief source of intermodal competition for long distance services relied upon by the incumbents in this proceeding. As AWS describes (p. 8), "CMRS carriers such as AWS utilize special access services in the same way interexchange carriers or CLECs do – to connect an end user to the carrier's point of presence." Specifically, wireless carriers use special access services to carry traffic between their switches and the cell stations where antennas establish connections to end-users. Moreover, AWS expects wireless carriers'

---

[30] *Id.*, ¶ 77.

[31] *See* AT&T at 16 & n. 35 (October 2002 statement by Qwest Chairman Richard Notebaert that it would not be "right" for Qwest to compete for Ameritech customers). In the absence of any meaningful out-of-region entry, geographic rate averaging would not offset the effect of anticompetitive leveraging of the local bottleneck by "caus[ing the BOC] to lose market share outside" the region in which its long distance customers are concentrated. *See LEC Classification Order*, ¶ 77.

AT&T has shown (p. 23) that precise product market definition is unnecessary because BOC control of the access bottleneck allows the BOCs to dominate all downstream long distance markets irrespective of how they are defined. AT&T at 23.

[32] AT&T at 16 & Selwyn Dec. ¶ 57.

[33] *See* Carlton, Sider & Shampine Dec. at 16; Qwest at 13; SBC at 28-29; Verizon at 5-8.

reliance on these special access facilities to increase as they expand and upgrade their networks to meet increased consumer demand and to provide broadband services.[34]

Furthermore, wireless carriers, just like IXCs, have no alternative to ILEC facilities for the vast majority of their special access needs. The ILECs account for more than 90 percent of AWS transport costs and about 96 percent of the special access transport needs of Voicestream.[35] Wireless carrier reliance on ILEC special access facilities has in fact increased as the number of competitive providers of these facilities has diminished, and self-provisioning is no more a viable alternative for wireless carriers than it is for IXCs.[36] Similarly, UNE-based competition provides no assistance to wireless carriers seeking special access facilities because the ILECs refuse to provide them with facilities in this way.[37] As noted by AWS (p. 3), BOC incentives to use their local bottlenecks to deny essential facilities to wireless carriers are increased when the BOCs view wireless carriers as competitors to BOC wireline services and further heightened as the BOCs increasingly bundle their local and long distance services with affiliated wireless services.[38]

As further noted by AWS (p. 4), the Commission has properly recognized that little wireless substitution for BOC services has occurred, with very few wireless customers abandoning their wireline phones, and only eleven percent of wireless customers replacing a

---

[34] AWS at 8. *See also*, Verizon at 15 (acknowledging that "CMRS carriers, like long distance carriers, must interconnect with the ILECs' networks").

[35] AWS at 9.

[36] *Id*. at 9-12.

[37] *Id*. at 12-13.

[38] *See* also, Selwyn Reply Dec., ¶¶ 45-46.

significant percentage of wireline usage with wireless usage.[39] A just-released J.D. Power study reports that only 3 percent of consumers exclusively use wireless service for local calls.[40] The Commission has also noted that service quality problems with wireless calls prevent wireless from being a full substitute for wireline calls.[41]

The other form of intermodal competition relied upon by the incumbents -- "Internet-based services such as e-mail, instant messaging, and voice over IP"[42] -- is also largely subject to the ILEC local bottleneck. Quite apart from the fact that non-voice Internet-based services are not close substitutes for most long-distance calls,[43] the ILECs control the overwhelming majority of the local telephone lines over which all "narrowband" Internet-based services are provided.[44] Voice over IP is in its infancy and -- in its most competitive form -- requires broadband Internet access, and local telephone lines are also the only source of "broadband" Internet services for the 30 percent of U.S. homes for which cable modem service is unavailable and for small business customers, which rarely have access to cable.[45] As a result,

---

[39] *See Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Radio Services*, Seventh report, 17 FCC Rcd. 12985, 13015-17 (2002).

[40] News Release, J.D. Power and Associates, Jul. 15, 2003, http://www.jdpower.com/news/releases/pressrelease.asp?ID=2003054. AWS (p. 4) similarly states that 3-5 percent of consumers use their wireless phone as their only phone.

[41] Selwyn Reply Dec., ¶ 44.

[42] Verizon at 7.

[43] *See, e.g.*, Selwyn Reply Dec., ¶ 41 (BOC claims in state PUC proceedings that demand for long distance services is highly inelastic belie their claims here concerning the existence of "rampant substitution" of services such as e-mail and voice over IP for wireline long distance calls).

[44] Selwyn Reply Dec. ¶ 47.

[45] *See* Reply Comments of AT&T Corp., *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, filed Apr. 22, 2002 ("AT&T Broadband Reply Comments"), at 15-16.

many residential customers and virtually all small businesses have no alternative to DSL for broadband Internet services, which is provided almost exclusively by the ILECs.[46] Indeed, when account is taken of both narrowband and broadband access to the Internet, nearly 76 percent of residential Internet users rely on the BOC bottleneck for Internet access.[47]

5. BOCs Have Used Their Local Bottlenecks To Harm Long-Distance Competition.

The comments also provide extensive real-world evidence that the BOCs have used their local bottlenecks to engage in price squeezes, cost misallocations and discrimination in long-distance markets -- and that the BOCs have done so even while they have been subject to section 272 safeguards.

Price squeezes. AT&T showed (pp. 26-32) that the BOCs have engaged in both types of price squeezes highlighted by the Commission in the *Access Reform Order*. First, BOCs have engaged in price squeezes by *raising* the price of special access services to all interexchange carriers, thus causing competing IXCs (as well as cellular, broadband and local service providers that also use the BOCs' special access services as essential inputs) "to either

---

[46] Moreover, as noted by Dr. Selwyn, BOC requirements that customers purchase local telephone service with DSL render VoIP service to DSL customers "entirely redundant to the BOC's dial tone line service." Selwyn Reply Dec., ¶ 48. *See also, Richard Levine et al., v. BellSouth Corp.*, (C.A. No. 03-20274, D.C. S.D. Fla.), filed Feb. 6, 2003 (class action complaint alleging that BellSouth markets DSL service and local phone service through an unlawful tying arrangement "whereby customers are required to purchase local phone service from BellSouth rather than from competitive local exchange carriers (CLECs) in order to obtain DSL service").

[47] Selwyn Reply Dec., ¶ 47. Accordingly, Internet service providers that rely on BOC bottleneck facilities to reach their customers are also vulnerable to BOC market power abuse. *See, e.g.* Reuters, *Calif. Internet companies sue SBC for antitrust*, Jul. 24, 2003 (reporting filing of federal antitrust complaint by California ISPs charging SBC with "attempting to squeeze them out of the state's broadband market" with "wholesale pricing [that] had the effect of forcing prices down to a point where the smaller ISPs could not compete on a level playing field for retail business"). Further, the elimination of 'line sharing' in the Triennial Review would "for all intents and purposes make the ILEC the only source of DSL available to any of the ILEC's residential and small business customers." Selwyn Reply Dec., ¶ 34.

raise their retail rates to maintain their profit margins or to attempt to maintain their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins."[48]

Flatly contradicting their claims in this proceeding that "competitive" markets are sufficient to protect IXCs and consumers against price increases, BellSouth, Verizon and Qwest have in fact raised their special access rates in every MSA in which they have been awarded Phase II special access pricing relief.[49] By exploiting their local bottlenecks to raise price in this way, the BOCs not only earn huge monopoly profits -- almost $6 billion according to a recent study filed with the Commission -- but also raise the costs of competitive suppliers of downstream long distance, local services, cellular and broadband service that must rely on BOC special access services as essential inputs and allow BOCs competing in these downstream markets to price squeeze their rivals.[50]

The ILECs also can price squeeze their competitors without raising access prices by using the second price squeeze method the Commission highlighted in the *Access Charge Reform Order* -- "by set[ting] its in-region, interexchange prices *at or below* its access prices."[51] Downstream competitors are then "faced with the choice of lowering their retail rates for

---

[48] First Report and Order, *Access Charge Reform*, 12 FCC Rcd. 15982, ¶ 277 (1997) ("*Access Reform Order*").

[49] AT&T at 31. *See also*, AWS at 14 ("ILECs often charge higher prices for special access circuits in areas in which they have obtained pricing flexibility.").

[50] AT&T at 31-32. The overwhelming BOC dominance of local business services markets shows the effects of the use of high special access charges to price squeeze their rivals. The BOCs account for 97 percent of local ATM revenues and 90.3 percent of local frame relay revenues. AT&T at 32, n.91. In numerous geographic areas, AT&T pays higher ILEC special access charges than the ILEC's retail price to customers for its intraLATA frame relay or ATM ports. *See* AT&T Broadband Comments, CC Docket No. 01-337, at 32-33 & Declaration of Alan Benway, para. 13.

interexchange services, thereby reducing their profit margins, or maintaining their retail rates at the higher price and risk losing market share."[52] That is exactly the situation that AT&T has faced in Texas, where SBC's long distance affiliate offers long distance services for as little as 6 cents per minute for residential customers, while SBC's IXC competitors must pay access charges on residential intrastate long distance calls of 5.67 cents per minute.[53] AT&T is subject to a similar price squeeze by Verizon in Virginia, where Verizon's bundled "Freedom" plans price intrastate long distance calls as low as 4 or 5 cents per minute, while AT&T must pay access charges averaging almost 8 cents per minute to originate and terminate intrastate long distance calls to Verizon local exchange customers.[54]

Cost misallocations. The comments confirm that the ILECs' local bottlenecks also provide myriad opportunities to cross-subsidize downstream long distance services, and even more so if they are allowed to provide local and long distance services through the same entity. AT&T has shown (pp. 42-45) that the BOCs have misallocated costs in this way, notwithstanding the existence of section 272 safeguards, by using their massive local service customer databases to provide marketing services to their long distance affiliates at reduced costs or even free of charge.

As Working Assets describes (pp. 4-5), by virtue of their monopoly local service customer base, the ILECs receive a huge, virtually cost-free incoming stream of local exchange

---

[51] *Access Reform Order*, ¶ 277 (emphasis added).

[52] *Id.*

[53] AT&T at 27. AT&T has estimated that SBC also incurs billing and marketing costs of at least 3.4 cents per minute. *Id*.

[54] AT&T at 28-29. AT&T also has shown that Verizon also engages in similar conduct in Washington. *Id*.

service related calls that they readily exploit to market their long-distance services. MCI (pp. 5-6) notes that this huge incumbent marketing advantage is further increased by "do not call" restrictions on marketing calls by companies that do not have an established business relationship with the customer. Costs also are misallocated in other ways. For example, SBC and Verizon provide billing and collection service discounts for which only their long distance affiliates are likely to qualify.[55]

The ILECs also harm long distance competition through more straightforward cross-subsidization, as AmericaTel describes (pp. 13-16), through the use of high profit local services, such as vertical features like call waiting, call forwarding and caller ID, to subsidize low long-distance rates. Indeed, BellSouth's long distance affiliate conditions its lowest long distance prices on the purchase of these high profit local services.[56]

Discrimination. The ILECs also have exploited their local bottlenecks to discriminate in favor of their own long distance services, such as through poor quality and delays in the provisioning of competitors' special access facilities, "growth" switched access rate discounts favoring high customer growth rates only likely to be achieved by the ILEC's own long distance services, and abuse of the PIC process.[57] AT&T has described (pp. 33-37) how the inferior BOC provisioning of special access facilities to their competitors is demonstrated by Biennial Audits for both Verizon and SBC and has led to adverse findings by the New York

[55] AT&T at 45.

[56] AmericaTel at 14. The Verizon "Freedom" plans similarly bundle high profit vertical features (voice mail, caller ID, call waiting, speed dialing and three-way calling) with local and long distance calling. *See* Selwyn Dec. (attached to Comments of AT&T), Att. 3 (Verizon web pages showing its "Freedom" plans).

[57] *See* AT&T at 33-42;

Public Service Commission and other state commissions.[58] In similar fashion, the incumbents' control of the PIC process allows them to implement PIC changes more quickly for their affiliates and engage in many other forms of discrimination, such as routinely placing "PIC freezes" on customers choosing their long distance affiliates (thus making it more difficult for those customers to make a subsequent change of carrier).[59]

II. DOMINANT CARRIER REGULATION IS NECESSARY TO PREVENT THE ABUSE OF BOC LOCAL BOTTLENECKS IN THE ABSENCE OF THE SAFEGUARDS RELIED UPON BY THE *LEC CLASSIFICATION ORDER*.

The ILECs would have an even greater ability to leverage their local bottleneck into downstream long distance markets if they are allowed to provide long distance services on an integrated basis without adequate competitive safeguards.[60] The incumbents notably fail to show that various alleged safeguards would prevent harm to competition in the long distance

[58] Notably, the data regarding performance from Verizon's most recent section 272 biennial audit, filed June 12, 2003, was redacted and hence unavailable for use in this proceeding, even though the Commission previously held that the plain language of section 272(d)(2) "mandates public disclosure of the results of the audit, which are contained in the final audit report." Memorandum Opinion and Order, *Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, CC Docket No. 96-150 (rel. Jun. 10, 2002), ¶ 5. BOCs also engage in discrimination to impede their competitors from providing other services that are frequently bundled with long distance. A prominent example is the BOCs' efforts to impede local exchange competition by refusing to provide DSL services to customers that switch to competitive local services, which the Commission has failed to prevent. MCI at 10. Sage reports (pp. 23-24) that Verizon not only refuses to provide DSL services to CLEC customers in Maryland but also has agreements prohibiting independent third party broadband providers from providing their services on CLEC lines.

[59] AT&T at 39-42. *See also*, Working Assets at 5 ("Verizon local exchange service representatives have claimed no knowledge of Working Assets and refused to presubscribe customers to Working Assets Long Distance"); MCI at 30 (citing New York PSC determination that Verizon discriminates in favor of its own long distance operations by requiring competitors to use a more cumbersome and expensive system for querying PIC freeze status information than the system used by Verizon's service representatives) & 32 (citing inflated BOC charges for PIC changes).

[60] *See* AmericaTel at 18-20; Vartec, Excel & Emeritus at 3, 5; MCI at 3, 7 & 20; Sprint at 6, 9; ZTel at 4; AHTU at 3-7; NJDRA at 5; Texas AG at 1-2; Texas PUC at 2-3, 6.

marketplace after the sunset of section 272. In fact, the Commission made clear in the *LEC Classification Order* that its existing nondominant treatment of the BOC long-distance affiliates was "predicated" on the existence of section 272. *See* Notice, ¶ 5.

Dominant carrier regulation is thus clearly necessary until other reforms are completed to ensure that all carriers may compete in long distance markets on a level playing field. As AT&T has emphasized (pp. 53-58), this conclusion is compelled by D.C. Circuit precedent that predictive judgments must be revised in accordance with significantly changed circumstances and by U.S. trade commitments to maintain appropriate measures to prevent anticompetitive practices by carriers controlling bottleneck facilities.

1. BOCs' Integrated Provision of Long Distance Services Presents Increased Risks of Anticompetitive Harm.

The integration of BOC long distance services does not itself create market power, as BellSouth mistakenly suggests (p. 6), because the BOCs already indisputably possess market power by virtue of their local bottlenecks. The issue is rather the increased ability to exercise that market power when the separate affiliate and other safeguards of section 272 are removed with the sunset of those requirements. The Supreme Court has emphasized that the company owning a local exchange has an "almost insurmountable competitive advantage" in the long distance market.[61] Indeed, the difficulty of preventing anticompetitive conduct when incumbent local exchange carriers participate in competitive long distance markets was an important reason for the break-up of the former Bell System.[62]

---

[61] *Verizon Communications, Inc*. v. FCC, 122 S. Ct. 1646, 1662 (2002).

[62] AT&T at 12 & n.24. *See also*, AmericaTel at 22-27 (describing prior Bell System anticompetitive conduct).

As AT&T has described, because there has been no meaningful change in the ILEC control of their local bottlenecks since the *LEC Classification Order* was issued in 1997, the sunset of the section 272 safeguards upon which the nondominant treatment of BOC long distance affiliates was predicated in that order mandates the use of dominant carrier regulation until the Commission completes reforms to prevent the incumbents from misusing their bottlenecks. Most incumbents fail to address this straightforward analytical framework, and Qwest's claim (p. 7) that "the existence of a Section 272 affiliate was not a key factor" in the *LEC Classification Order* is refuted by even a cursory review of that order.[63] The Commission stated in paragraph 134:

> "We therefore see no reason to impose dominant carrier regulation on the BOC interLATA affiliates, given that section 272 contains numerous safeguards designed to prevent the BOCs from engaging in improper cost allocation, discrimination and other anticompetitive conduct. We emphasize that our decision to accord non-dominant treatment to the BOCs' provision of in-region interLATA services is predicated upon their full compliance with the structural, transactional and non-discrimination requirements of section 272 and our implementing rules."

Indeed, Qwest demonstrates the same concern about monopoly leveraging into competitive markets in its recently filed comments in the inquiry concerning broadband over power line systems that competitive carriers express in this proceeding. Qwest warns that because electric utilities that are likely broadband over power line providers "have a monopoly in their principal business, the distribution of electric power," there is consequently "the potential for the leveraging of that monopoly to benefit [broadband over power line] service in

[63] *See LEC Classification Order*, ¶¶ 91, 103-05, 108, 112-18, 134. *See also*, AT&T at 58-60; Sage at 32-34 (quoting *LEC Classification Order*, ¶¶ 82, 91, 104, 116, 128 & 134).

the highly competitive broadband service market."[64] Qwest therefore requests Commission safeguards "to ensure that [broadband over power line] service is not improperly subsidized by the electric distribution services of its providers."[65]

BOC provision of other downstream services on an integrated basis does not show that concerns about leveraging of the local bottleneck are misplaced, contrary to the claims by Verizon (pp. 12-15). Because most consumers choose the same long distance carrier for both interLATA and intraLATA toll calls,[66] the BOCs inevitably lost intraLATA toll market share to IXCs once those services were opened to pre-subscription following the 1996 Act and before the BOCs received 271 relief.[67] However, BOC intraLATA toll market share numbers are significantly understated because the BOCs -- pre-271 relief --responded to IXC competition in intraLATA toll by offering expanded local calling areas.[68] And the fact that -- pre-271 relief -- the BOCs continued to provide intraLATA toll services to almost 40 percent of all local service customers even though those customers were required to select a separate interLATA IXC rather serves to underscore the enormous value of the BOCs' incumbency and incentives for misconduct provided by operational integration.[69] Consequently, post-271, very few, if any,

---

[64] Comments of Qwest Communications International, Inc., ET Docket No. 03-104, Inquiry Regarding Carrier Current Systems, Including Broadband Over Power Line Systems, filed Jul. 7, 2003, at 4-5.

[65] *Id*.

[66] *See* Declaration of Craig Farber (attached hereto), ¶ 2 (more than eighty percent of customers that use AT&T for interLATA and intraLATA calls switch both interLATA and intraLATA PICs when they change to another long distance carrier).

[67] For the same reason, the BOCs are now rapidly regaining intraLATA toll market share after receiving 271 relief. *Id.* *See also*, Selwyn Reply Dec., ¶ 31 (Verizon reports net gains of intraLATA customers in each of the last five quarters).

[68] *See also, id*., ¶ 30, n.43 (describing Verizon expanded local area calling plans).

[69] *Id*., ¶ 30.

customers are likely to select a BOC for interLATA service while choosing a non-BOC for intraLATA calling. Dr. Selwyn estimates that, based on current trends, BOC intraLATA shares will increase "back to a level of 80% or higher."[70]

Similarly, low BOC market shares in providing interLATA services in very limited "corridor" areas when consumers can use BOC services only by "dialing around" their chosen IXC have no bearing on BOC conduct when they provide interLATA services on an integrated basis.[71] Low BOC market shares in CPE and certain information service markets are also irrelevant because the BOCs do not serve those markets at all or only partially.[72] Significantly, Verizon makes no reference to the market for DSL services, where the BOCs have successfully leveraged their local bottlenecks to dominate this adjacent competitive market.

2. Marketplace Developments Heighten the BOCs' Ability to Abuse Their Local Bottlenecks and Harm Long-Distance Competition.

[70] *Id.*, ¶ 31.

[71] Customers seeking to use BOC "corridor" services prior to the relevant BOC obtaining section 271 relief not only must "dial around" their selected interLATA carriers but also must identify correctly whether a particular call falls within the "corridor." *Id.*, ¶ 28.

[72] *See* Verizon at 15, n.16; SBC at 47-48. As Dr. Selwyn also shows (¶¶ 35-37), the fact that the BOCs are "minor players in the CPE market" (Verizon, p. 15, n.16) is irrelevant because the BOCs have never re-entered this market after they transferred their embedded base of CPE to AT&T with the break-up of the former Bell System in 1984. Further, because CPE interconnection is effected by the use of a standard plug and jack and CPE is widely sold through standard retail channels, a BOC could achieve no particular competitive benefit by offering CPE. Similarly, the claim that the BOCs hold a 15 percent share of voice messaging services is beside the point, because the BOCs are chiefly engaged in, and appear to dominate, the type of voice messaging services where the BOCs obtain primary value from their operational integration, the provision of single mailbox services to residential and small business users. Selwyn Reply Dec., ¶¶ 32-33. For example, the BOCs do not typically compete for voice mail business from purchasers of multiple mailboxes, such as PBX users. *Id.* Contrary to Verizon's further claims regarding inside wiring (p. 15, n.16)), there have been complaints that the BOCs have exploited their relationships with monopoly local service customers to sell inside wiring contracts. *Id.*, ¶ 38.

Developments in the long distance market since the *LEC Classification Order* have heightened rather than diminished the potential harms to competition if the BOCs provide local and long distance services through the same entity. BOCs have demonstrated that they quickly leave behind the "zero market shares" cited by the *LEC Classification Order* when they enter in-region long-distance markets and that they grow market share at a very rapid and unprecedented rate. For example, in the two years following its entry to New York, Verizon achieved a market share of 34 percent, which is larger than any non-AT&T IXC has ever achieved, and that took all non-AT&T IXCs more than ten years to achieve collectively following the 1985 beginning of equal access.[73] SBC has informed its investors that it has market shares of "43 percent overall and about 50 percent for consumer lines" in the six states where it provides long long distance.[74] As described by Dr. Selwyn and AHTUC (pp. 13-15), this lightning growth of BOC long distance market share in their section 271-authorized states further distinguishes the BOCs from AT&T, which was found non-dominant in 1995 only after years of steady market share decline that has continued since that finding was made.[75]

Not surprisingly, the BOCs seek to downplay their long distance market share achievements here by citing market share information only for purported "nationwide" long-

---

[73] Selwyn Dec., ¶ 53. *See also*, MCI at 2 (MCI "did not achieve a 20 percent market share until 1994, a decade after divestiture, and has never achieved a 30 percent market share"). AT&T erroneously stated in its comments (p. 63) that this Verizon market share was more than twice the largest market share ever achieved by any non-AT&T IXC.

[74] *Id*; SBC Investor Briefing, 7, http://www.sbc.com/Investor/Financial/ Earning_Info/docs/1Q_03_IB_FINAL.pdf. *See also,* Statement of Edward Whitacre, CEO, SBC Communications, Transcript, April 24, 2003 Conference Call Addressing First Quarter 2003 Earnings (contending that SBC has achieved "near 50 percent" penetration of the consumer long distance market in its Southwestern territories).

[75] *See also*, Selwyn Reply Dec., ¶ 8.

distance markets[76] and by contending that their long distance market shares show "relative stabilization within 18 months of entry."[77] In fact, the Deutsche Bank study on which the Qwest/SBC/Verizon economists rely for this claim projects that BOCs will obtain "over 50%" of residential users.[78] Indeed, SBC goes so far as to assert (p. 25) that "*no one* forecasts [that BOC long-distance business] will *ever* hit the roughly 60% level that AT&T had when it was declared to be nondominant"[79] -- although *SBC itself* has advised investors it expects to achieve market shares in all its section 271 jurisdictions similar to the 60 percent market share it has obtained in Connecticut.[80]

As noted by AT&T and MCI (p. 19), the SBC-Pacific Telesis-Ameritech-SNET and Bell Atlantic-NYNEX-GTE mergers have greatly reduced the extent to which SBC and Verizon pay terminating access charges to other BOCs, thus giving them an insurmountable cost advantage over IXCs on many calls with regard to *both* originating and terminating access.[81] These BOC mergers have also expanded the scope of these carriers' so-called "official"

---

[76] *See* Verizon at 25 (claiming 3.4 percent share of a "total nationwide toll market," 2 percent share of "interstate toll revenues" and 5.6 percent share of "nationwide residential interLATA minutes"). *See also*, Selwyn Reply Dec., ¶ 17.

[77] Carlton, Sider & Shampine Dec. at 13, citing Deutsche Bank Securities Inc., *Last Man Standing*, Wireline Mid year Review, May 27, 2003, at 35.

[78] Selwyn Reply Dec., ¶ 18, quoting Deutsche Bank Securities Inc., *Last Man Standing*, Wireline Mid year Review, May 27, 2003, at 84.

[79] Emphasis added.

[80] Selwyn Dec., ¶ 35; Selwyn Reply Dec., ¶ 20. *See also, id*., ¶ 21 (Bear Stearns reports, based on conversations with SBC executives, that SBC "is targeting long-run (3-4 years) penetration in the 60%-70% range"). Further, as shown by Dr. Selwyn, analysis of the data set forth in the FCC Long Distance Competition Report indicates that SBC has a 68 percent long distance market share in Connecticut and that Verizon has achieved a 68 percent long distance market share within its California and Nevada local service footprint. *Id*., ¶ 19.

[81] *See SBC-Ameritech Merger Order*, ¶ 207 (finding merger increased incentive of SBC-Ameritech to discriminate against competitors).

networks, which are interLATA facilities constructed for BOC intracompany traffic and transmission of calls to directory assistance and operator services to remotely located centralized facilities, and which may be used without restriction to provide long distance services following sunset of section 272.[82]

Claims by Verizon (p. 27) that the ILECs lack any advantages in cost structure notably ignore the ILECs' continuing huge access cost advantage that (1) requires IXCs to pay ILECs enormous subsidies to originate and terminate long distance calls, and (2) encourages the ILECs to engage in anticompetitive price squeezes against IXCs. The Commission's expectations in the *LEC Classification Order* that price squeeze risks would be "greatly reduced" by cost-based access to BOC networks and local competition have not been realized because both interstate and intrastate access charges remain far above cost, local competition has developed much more slowly than anticipated, and the Commission has greatly limited the use of UNEs for long distance access.[83] Indeed, MCI (pp. 17-19) emphasizes that because of special access pricing flexibility, continued high interstate and intrastate switched access rates, restrictions on the use of UNEs for access and BOC merger activity, price squeeze risks are now substantially higher than in 1997.

Similarly, Verizon's further claims (*id.*) that major IXCs even enjoy "considerable technological and cost advantages over the BOCs" fail to recognize that interexchange transport has become a relatively minor cost element in the provision of long distance services that is dwarfed by other long distance costs of access charge payments to

---

[82] AT&T at 66.

[83] *Id*. at 64-65.

ILECs, billing and collection, advertising and marketing, and customer service.[84] For these reasons, as Dr. Selwyn has described, BOC claims that long distance facilities are "sunk costs" that will always remain available for re-use by new entrants even if existing IXCs are driven out of business should be treated with considerable skepticism.[85] Because any savings to the new entrant on network-related transport costs would be eclipsed by the greater savings that a BOC may realize from not having to pay itself originating access charges and from the ability of a BOC providing long distance on an integrated basis to use its local services to subsidize its long distance operations, it is most unlikely that long distance facilities would in fact be re-used in this way.[86]

In view of the numerous bankruptcies and financial problems affecting competitive telecommunications providers in recent years, it is clear that the incumbents face financially weaker competitors than in 1997.[87] And several of the larger wireless carriers they claim here as "large, well established rivals" are their own affiliates.[88]

3. Bundled Local and Long Distance Service Packages Facilitate BOC Leverage of Their Local Bottlenecks.

The incumbents' ability to leverage their local bottlenecks is now greatly assisted by the fast-growing popularity of bundled offerings including local and long distance services

[84] AT&T at 64 & Selwyn Dec., ¶ 95.

[85] *Id*. *See* SBC at 31 (contending that long distance facilities "will almost certainly remain in the marketplace even if the firm that currently owns them exits"); Carlton, Sider & Shampine Dec. at 29-30.

[86] *See, id*. *See also*, Selwyn Reply Dec., ¶ 67.

[87] *See* AT&T at 63-64. *See also, e.g.*, AT&T Georgia 271 Comments, Att. 2 (listing current financial status of CLECs).

[88] *See* Carlton, Sider & Shampine Dec. at 29.

with unlimited calling, and that may also include DSL and wireless services.[89] J.D. Power reports that the proportion of households that bundle at least local and long distance services from the same carrier has increased to 40 percent in 2003 from 26 percent in 2002.[90] However, IXCs can bundle local and long distance services only if they are also CLECs, and as the Commission has emphasized, it is "much easier" for BOCs to enter long distance markets than for CLECs to enter local markets.[91] Thus, as MCI underscores (p. 6), the bundling of local and long distance services assists BOCs to use their local incumbency to gain long distance market share "even if they are less efficient than their rivals in their provision of interLATA service."[92]

As AT&T has similarly noted (p. 65), such bundling facilitates anticompetitive cross-subsidization and price squeeze activity.[93] Moreover, the Deutsche Bank report relied upon by the Qwest/SBC/Verizon economists also makes clear that BOCs have strong incentives to engage in such conduct. Deutsche Bank states that because "[t]he average residential spend on local exchange services is $36-37 per month, compared to $12-13 for long distance services .

---

[89] AT&T at 65; MCI at 6.

[90] News Release, J.D. Power and Associates, Jul. 15, 2003, http://www.jdpower.com/news/releases/pressrelease.asp?ID=2003054.

[91] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications act of 1934, as amended, to Provide In-region InterLATA Services in Michigan*, 12 FCC Rcd. 20543, ¶ 17 (1997). *See also*, Selwyn Reply Dec. ¶ 25 (while a BOC merely needs to add "the incremental cost of providing long distance service, minus above-cost access, to the price it already sells to local consumers," which is "completely seamless to the customer and without risk to the BOC," an IXC must "be prepared to offer local service at retail, either by deploying its own facilities or by means of BOC-provided resale services or UNEs").

[92] Deutsche Bank also notes that "[a]ny significant change in the regulatory climate will completely negate [the UNE-P] model, as would any significant change in external costs (such as marketing, revenue sharing etc.)." Selwyn Reply Dec. ¶ 26, quoting Deutsche Bank Securities Inc., *Last Man Standing*, Wireline Mid year Review, May 27, 2003, at 36.

[93] The inclusion of additional services such as DSL in these packages also allows the BOCs to leverage their refusal to provide DSL services on CLEC lines to advantage their long distance services.

. . the RBOCs have the incentive to completely commoditize the long distance value proposition in the interests of defending their higher value local exchange franchise."[94] Deutsche Bank further states: "This is the method in the madness of the extremely competitive RBOC packages in the market, offering inter-LATA for as little as $0.02 per minute vs. prevailing rates of around $0.07-0.09."[95]

Dr. Selwyn notes that "[b]y offering 'unlimited' long distance calling at an almost negligible pricing increment vis-à-vis local service - a pricing increment that frequently falls short of the out-of-pocket access charges that a rival IXC would be forced to pay to provide a comparable quantity of long distance calling – the BOCs are fundamentally reshaping mass market telephone service into what some have called an 'all distance' model in which carriers that offer 'less than all' of the components of such 'all distance' packages will be relegated to the lowest end of the customer spectrum."[96] Also, "by exploiting their captive, near-ubiquitous local service customer base, the BOCs are able to extend their local market dominance into long distance and make a large portion of residential customers enormously more difficult to address, as a practical matter, by carriers that do not have the local service incumbency aadvantages uniquely available to the BOCs."[97]

4. Other Purported Safeguards Identified By The Incumbents Fail To Prevent Anticompetitive Leveraging of the Local Bottleneck.

BOC claims that dominant carrier regulation is unnecessary after the sunset of section 272 because other existing regulatory provisions or market factors would allegedly

[94] Selwyn Reply Dec. ¶ 26, quoting Deutsche Bank Securities Inc., *Last Man Standing*, Wireline Mid year Review, May 27, 2003, at 100.

[95] *Id.*

[96] Selwyn Reply Dec. ¶ 23.

prevent abuse of the local bottleneck are belied by the evidence described above that the incumbents have already engaged in price squeezes, cost misallocation and discrimination against their IXC competitors.[98] The BOCs' ability to engage in such conduct even before the sunset of section 272 -- while they have also been subject to all the additional existing regulatory provisions and market factors they identify here -- refutes their claims that these other purported safeguards would prevent such misconduct after sunset of section 272. Indeed, these other alleged safeguards are patently inadequate, as described below.

Price squeezes. Section 272(e)(3) -- upon which the BOCs primarily rely to prevent price squeezes[99] -- is clearly insufficient for this purpose because it requires the imputation only of access costs, and fails to address non-access costs, such as sales and marketing, billing and collection, uncollectibles, customer care and other network costs.[100] Consequently, a BOC may comply with Section 272(e)(3) while still subjecting its IXC rivals to a price squeeze by setting its retail price at or above its access costs but at a level that does not also cover its non-access costs. For this reason, as explained by AHTUC (p. 17), this imputation requirement has "very limited utility." In contrast, dominant carrier regulation ensures that a dominant carrier's retail prices cover all relevant costs, including both access and non-access costs.[101]

---

[97] *Id.*

[98] *See* BellSouth at 6, 10; Qwest at 16-17; SBC at 41-43; Verizon at 19-21.

[99] *See* BellSouth at 21; Qwest at 19

[100] AT&T at 49-50.

[101] As AT&T has further described (pp. 49-50 & n.165), Section 272(e)(3) nonetheless remains a necessary additional safeguard and BOC compliance with dominant carrier cost support requirements for access costs should be based on the imputed access cost required by this section rather than the economic cost of access to a BOC. Otherwise, BOCs would still be able to use

(continued . . .)

The assertion by Qwest (pp. 17-18) that price cap regulation and tariffing requirements for access prevents any price squeeze from occurring is clearly wrong. Qwest ignores the fact that the ILECs can price squeeze their competitors without raising access prices by setting long distance prices "at or below [their] access prices"[102] -- and, indeed, have pursued exactly this strategy in several states, as AT&T has described (pp. 26-30). Contrary to Qwest's further claim (p. 17), the CALLS plan does not "end any possibility" of predatory price squeezes because it does not reduce access charges to the level of long-run economic cost. CALLS also has no effect on intrastate access charges, which remain many multiples higher than cost. Qwest also entirely ignores the fact that price caps do not prevent the ILECs from raising special access rates where they have been granted pricing flexibility and from using these higher rates to price squeeze the long distance, local services, wireless and broadband suppliers that rely on ILEC special access services as essential inputs.

Because the real incremental cost of access to the ILEC is one cent or less per minute, the ILEC may price squeeze its competitors in this way without incurring any losses that it would need to "recoup" by subsequently raising prices -- which refutes the claims here by the Qwest/SBC/Verizon economists that such a strategy requires a subsequent increase in price that

---

their access cost advantage to price squeeze rivals even while complying with dominant carrier rules. Similarly, the relevant access costs for imputation should be those paid by unaffiliated IXCs rather than the costs of any different facilities used by the BOC. *Id*. *See also*, Selwyn Reply Dec. ¶ 76 (describing how BOCs have attempted to avoid imputation requirements for intrastate services provided on an integrated basis by contending they should impute only the cost of the services they use rather than the cost of access services provided to unaffiliated IXCs). Additionally, to prevent cross-subsidization, imputation must be on a service by service basis. AT&T at 50.

[102] *Access Reform Order*, 12 FCC Rcd. 15982, ¶ 277.

the ILECs would "not be able to sustain."[103] Indeed, other BOC economists have made this point crystal clear by arguing that because BOC access rates are above-cost, a BOC entity as a whole may earn profits while lowering long-distance prices, regardless of whether the BOC's downstream long-distance service earns a stand-alone profit.[104] The Deutsche Bank report relied upon by the Qwest/SBC/Verizon economists also emphasizes, as described above, that BOCs have strong incentives to engage in such conduct in order to "defend[] their higher value local exchange franchise."[105]

Additionally, as noted by Dr. Selwyn, modern economics now takes the view that "predatory pricing can be a successful and fully rational business strategy."[106] For example, one authority explains that "in more complex, realistic market situations, such as those with imperfect information about costs or about market toughness, aggressive pricing can yield significant long-run benefits to the incumbent firm."[107] Here, such a strategy readily may be financed "where rivals' own payments to the BOC for monopoly access services are then used by the BOC to create the price squeeze," and "there is almost no likelihood that investment

---

[103] Carlton, Sider & Shampine Dec. at 29. *See also*, Z-Tel at 4 (showing that BOCs may price-squeeze their competitors while pricing above their incremental access costs).

[104] AT&T at 30; Selwyn Dec., ¶ 62 (citing Jerry A. Hausman, Gregory K. Leonard & J. Gregory Sidak, "*The Consumer-Welfare Benefits from Bell Company Entry Into Long-Distance Telecommunications: Empirical Evidence from New York and Texas*," 70 Antitrust L.J. 463 (2002)).

[105] Selwyn Reply Dec. ¶ 26, quoting Deutsche Bank Securities Inc., *Last Man Standing*, Wireline Mid year Review, May 27, 2003, at 100.

[106] Selwyn Reply Dec., ¶ 61, quoting Patrick Bolton, Joseph F. Bradley and Michael H. Riordan, "Predatory Pricing: Strategic Theory and Legal Policy," Boston University School of Law Working Paper series, Working Paper 99-5 (Jan. 29, 2000), at 1. *See also*, Selwyn Reply Dec., ¶¶ 59-63 & n.78 (citing economic sources "challenging the notion that predatory pricing is rare").

[107] Selwyn Reply Dec., ¶ 62, quoting Aaron S. Edlin, "*Stopping Above-Cost Predatory Pricing*," Yale Law Journal 111, Jan. 2002, at 955-56.

capital would be made available to finance any consequential IXC reentry initiative."[108] As the Deutsche Bank study further states, "neither UNE providers, independent wireless, DSL operators nor cable MSOs have anything approaching the RBOCs' financial capacity or customer reach. *In the game of 'last man standing,' the RBOCs will be that man*."[109]

SBC (p. 47) is mistaken in contending that the public nature of access charges and retail prices itself provides sufficient protection against improper pricing. As SBC describes (pp. 20-21), long distance services are now sold "in a multiplicity of ways," including interLATA and intraLATA services being marketed together, flat rate plans with unlimited long distance calling, "bucket plans" in which consumers incur no additional cost until the bucket is empty, and bundles of wireline and wireless long distance services. In this complex marketing environment, it is simply not correct that anticompetitive pricing "should be readily identifiable" as the Qwest/SBC/Verizon economists claim (p. 37). Indeed, the same economists themselves go on to make clear that anticompetitive pricing is *not* "readily identifiable" in the absence of dominant carrier tariff filing requirements by contending, on the very next page of their declaration (p. 38), that dominant carrier regulation would "reduc[e] the ability of firms to engage in price competition, *including offering secret discounts*."

There also is no basis to the incumbents' claims that sections 201 and 202 would protect against anticompetitive pricing.[110] Without dominant carrier regulation, there is no

[108] Selwyn Reply Dec., ¶¶ 65, 67. That is because "the threat of a BOC predation strategy following such re-entry would be more than sufficient to chill any serious investor interest in such a venture." *Id.* Customer reacquisition costs would far eclipse any "sunk" network costs and any new entrant would face continuing huge obstacles in competing against BOC bundled offerings. *Id.*

[109] Selwyn Reply Dec. ¶ 68, quoting Deutsche Bank Securities Inc., *Last Man Standing*, Wireline Mid year Review, May 27, 2003, at 4 (emphasis added).

[110] *See* Qwest at 19; BellSouth at 18.

means of review to allow ready determination of whether ILEC prices are supported by cost. And contrary to the incumbents' further claims that the section 208 complaint process would allow the Commission to investigate allegations of unlawful pricing and other discriminatory conduct, AT&T has shown (pp. 52-53) that such an approach is inherently deficient in preventing this or any other type of BOC bottleneck abuse. The BOCs have demonstrated that they are willing to breach and endlessly litigate their obligations,[111] and have also shown that they can obtain huge increases in market share in the period it may take to address an IXC complaint. Moreover, the courts have held that the existence of such a "safety valve" does not excuse an agency from failing to address a systemic problem inherent in an overly-permissive regulatory scheme.[112] For similar reasons, the availability of antitrust remedies also fails to prevent harm to long distance competition from BOC misconduct, contrary to BOC claims here.[113]

Cost misallocation. The purported safeguards against cost misallocation cited by the BOCs also are ineffective. Dr. Selwyn has shown that price cap regulation does not prevent the misallocation of long distance costs to local services, as demonstrated by a recent

---

[111] *See* AT&T at 52 & n.174; Sprint at 9-11 (listing Qwest, SBC and Verizon fines, violations or consent decrees that "are certainly telling of the BOCs' willing ness to abuse their dominance).

[112] AT&T at 53. *See Time Warner Entertainment Co., L.P. v. FCC*, 56 F. 3d 151 (D.C. Cir. 1995)

[113] *See* Qwest at 19; SBC at 3; Carlton, Sider & Shampine Dec. at 30. There is also uncertainty regarding the availability of an antitrust remedy as a result of *Goldwasser v. Ameritech Corp.,* 222 F.3d 390 (7th Cir. 2000). *Compare Law Offices of Curtis v. Trinko v. Bell Atl. Corp.,* 294 F.3d 307 (2nd Cir. 2002); *Covad Communications Co. v. BellSouth Corp.,* 299 F.3d 1272 (11th Cir. 2002). The Supreme Court has recently granted certiorari of the Second Circuit's decision in *Trinko* and is expected definitively to resolve whether antitrust liability can be found for failure to comply with the 1996 Act.

California Public Utilities Commission audit of SBC-Pacific Bell.[114] The audit found that SBC-Pacific Bell and its affiliates had engaged in improper cross-subsidization by creating bogus "costs" and making uncompensated transfers of value that had the effect of substantially understating SBC-Pacific Bell's operating income.[115] SBC could then use this apparent result to obtain modification of the price adjustment mechanism in the price cap regime, thus effectively shifting costs to its local exchange customers.[116] Furthermore, many state price cap plans allow the BOCs to raise rates for services reclassified as "competitive," which can be used to cross-subsidize other services.[117] Thus, BOC claims that price caps prevent cost misallocation assume that price adjustment mechanisms are correctly specified and that price cap schemes are never revised, which is not correct.[118]

Additionally, Qwest (p. 20) is wrong in contending that Part 64 and Part 32 rules remove "any possible" cross-subsidization. As shown by Dr. Selwyn, Part 64 allows the BOCs "significant discretion" to misallocate common costs of integrated activities under the lesser scrutiny that would accompany nondominant treatment, and that is so irrespective whether BOC in region long distance services are treated as regulated or nonregulated activities under those

---

[114] *See* BellSouth at 20; SBC at 45; Verizon at 19-20. *See also*, Selwyn Dec., ¶ 98; Selwyn Reply Dec., ¶ 58.

[115] Selwyn Dec., ¶ 98.

[116] *Id.*

[117] *Id*. Thus, as described in Section I above, BOC local/long distance bundles frequently include "enormously profitable" vertical service features such as call waiting and caller ID. *Id.*

[118] Selwyn Reply Dec. ¶ 5. Treatment of long distance services as regulated activities under Part 64, as requested by BellSouth (p. 21), would require no allocation of costs between local and long distance services and thus would certainly not prevent cross-subsidization. *See* Selwyn Reply Dec., ¶ 57.

rules.[119] Additionally, the aggregate nature of Part 64 data precludes any comparison of costs with particular long distance plans.[120] Thus, unless BOCs also are subject to dominant carrier regulation when they provide in-region long distance services on an integrated basis, the application of cost allocation and accounting rules would not allow determination of whether BOC prices take account of all relevant costs.

Further, while Verizon (p. 16) claims that local competition prevents the misallocation of BOC long distance costs to their local services, Verizon itself has recently raised local rates in New York and Massachusetts, two of the states with the highest CLEC penetration rates.[121] As noted by Dr. Selwyn, it is unlikely that Verizon could raise customer costs in this way if it were "truly facing price-disciplining local competition."[122] Thus, BOC market power in local exchange and exchange access -- with control of 96.6 percent of switched access lines, and 87 percent of local customers -- continues to allow the BOCs to raise local prices above competitive levels, and prevents local competition from acting as an effective constraint on the misallocation of costs.

Discrimination. The *LEC Classification Order* affirmed that BOCs could use their local exchange bottlenecks to discriminate against IXC competitors in "various ways . . . such as through poorer quality interconnection arrangements or unnecessary delays in satisfying its competitors' requests to connect to the BOC network."[123] The Commission made clear that BOCs have multiple incentives to engage in discrimination against their long distance rivals, and

[119] *Id*., ¶¶ 53-54.

[120] *Id*., ¶ 56.

[121] Selwyn Reply Dec., ¶ 16.

[122] *Id*.

[123] *LEC Classification Order*, ¶ 111.

that where customers seek bundled local and long distance services, "degrading a rival's interexchange service may also undermine the attractiveness of the rival's interexchange/local exchange package and thereby strengthen the BOC's dominant position in the provision of local exchange services."[124] The fast-rising popularity of bundled offerings now heightens those incentives. For the same reasons, AWS emphasizes (pp. 6-7) that the BOCs also now have similar incentives to engage in non-price discrimination against wireless carriers -- "to offer bundled wireless services with better quality than their would-be competitors," and also to stymie inter-modal competition.

Contrary to the assertion by the Qwest/SBC/Verizon economists (p. 27) that the sunset of the section 272 structural separation requirement would not affect "[BOCs'] ability and incentive to engage in non-price discrimination," the ability to disadvantage competitors in this way is undoubtedly increased if the increased transparency provided by an arm's length relationship between separate entities providing BOC local and long distance services is removed. As noted by the Texas PUC (p. 6), the ability of an integrated BOC to discriminate without detection is greatly enhanced by the removal of the separate long distance affiliate.

To prevent BOCs from abusing their market power in this way, the 1997 order substantially relied on section 272 nondiscrimination and structural separation requirements that

---

[124] *Id.* The Commission disregarded BOC claims that they had a significant disincentive to provide inferior access to IXCs because of the significant revenues they obtained from IXCs -- similar to the claim here by BellSouth (p. 14) that the large revenues BOCs receive from providing special access to IXCs prevents disfavored treatment. *See id.*, ¶¶ 109, 111. The Commission's finding in 1997 that BOCs had the incentive to discriminate against unaffiliated interLATA carriers to benefit both the long distance and local businesses and that "[w]e continue to be concerned that a BOC could attempt to" engage in such discrimination (*id.*) has been shown to be correct by the discriminatory conduct that has subsequently occurred. *See* AT&T at 33-42.

are subject to sunset under the Commission's present interpretation of the statute.[125] The Commission specifically found in the *LEC Classification Order* that "the structural separation requirements of section 272(b) will constrain a BOC's ability to discriminate against its affiliate's interLATA competitors."[126] Indeed, the Commission emphasized in the *Non-Accounting Safeguards Order* that the non-discrimination safeguards of Section 272(e) "would offer little protection if a BOC and its section 272 affiliate were permitted to own transmission and switching facilities jointly."[127] The Commission thus made clear that reliance on the non-sunsetting nondiscrimination requirements of Section 272(e)(1), as the BOCs advocate here, would greatly diminish safeguards against discrimination.[128]

Even with existing section 272 safeguards, the present BOC performance in provisioning special access is seriously deficient and has resulted in adverse findings by several state commissions.[129] Major telecommunications users are similarly concerned that the non-discriminatory provisioning requirement of section 272 has failed to ensure timely and adequate

---

[125] *LEC Classification Order*, ¶¶ 112, 114, 116. Contrary to the claim by BellSouth (p. 19), Qwest concedes (p. 18, n.72) that section 272(e)(2) and (4) "will continue to apply as long as BOCs choose to provide interLATA long distance services through a separate affiliate, albeit one that is not a Section 272 separate affiliate." Moreover, for the reasons explained in AT&T's comments and in this reply, BOC long distance services that are not subject to all the safeguards of section 272 should be subject to dominant carrier regulation, and that is so irrespective of whether the BOC provides long distance services after sunset of section 272 on an integrated basis or through a separate affiliate. Z-Tel (p. 6) incorrectly claims that enforcement of section 272(e)(4) is alone sufficient to prevent anticompetitive price squeeze activity because this section, unlike dominant carrier rules, does not require the filing of tariffs and thus does not provide review of whether BOC long distance prices are supported by all relevant costs.

[126] *Id.*, ¶ 116.

[127] *Non-Accounting Safeguards Order*, ¶ 160 (noting that joint ownership would preclude any "comparison of the terms of transactions between a BOC and a section 272 affiliate with the terms of transactions between a BOC and a competitor of the section 272 affiliate").

[128] BellSouth at 12-13; SBC at 42; Verizon at 21.

[129] AT&T at 33-37.

special access provisioning.[130] As noted by the Texas PUC (p. 3), a critical deficiency is that section 272(e)(3) provides no means of verification. Furthermore, the claim by the Qwest/SBC/Verizon economists (p. 27) that discrimination is unlikely to occur because it will not "avoid detection by regulators and spohisticated rivals" is belied by consistent BOC efforts to frustrate any such inquiry through confidentiality agreements forbidding disclosure of service quality data and other BOC efforts to hide data on their special access performance from the public view.[131] The difficulty of identifying discrimination will be further increased once the transparency provided by the separate subsidiary relationship between BOCs and their section 272 long distance affiliates is removed.

III. BOCS PROVIDING LONG DISTANCE SERVICES ON AN INTEGRATED BASIS SHOULD BE REGULATED AS DOMINANT CARRIERS UNTIL THE COMMISSION COMPLETES REFORMS PREVENTING ABUSE OF THEIR LOCAL BOTTLENECKS.

Competitive carriers express strong concern that any sunset of section 272 is premature.[132] AT&T has similarly urged in its comments on that issue that, because of the increased ability of the BOCs to leverage their local bottlenecks if they provide local and long distance services on an integrated basis, the Commission should retain the separate long distance affiliate, nondiscrimination and transactional requirements that are otherwise removed by the sunset of section 272.[133]

---

[130] AHTUC at 17.

[131] AT&T at 36-37. SBC's claim (p. 43) that a BOC could not be sure that it would benefit from discrimination because a customer dissatisfied with one IXC would be "just as likely" to switch to another IXC as to the BOC is clearly wrong. Because BOC long distance market shares are growing much more quickly than their IXC rivals, a BOC can reasonably expect that it would be the major beneficiary of its misconduct.

[132] Sage at 27-31; Sprint at 12;

[133] *See, e.g.*, Comments of AT&T, WC Docket No. 02-112, filed Aug. 5, 2002.

Competitive carriers also make clear that dominant carrier regulation is the minimum safeguard necessary to prevent harm to long distance competition from the abuse of local bottlenecks following the sunset of section 272 requirements.[134] As described by AT&T (pp. 47-48) and Sage (p. 34), the transparency provided by the dominant carrier tariff filing requirement is essential to prevent unreasonable and discriminatory charges where market power is present.[135] The filing of rates, and other terms and conditions with supporting data "allows both the FCC and affected customers to review and challenge price changes" and, most importantly, serves to deter market power abuses by increasing the likelihood they will quickly be detected.[136]

The potential benefits of dominant carrier regulation were recognized by the *LEC Classification Order*. The Commission acknowledged that "certain aspects of dominant carrier regulation might constrain a BOC's ability to raise the costs of its affiliate's interLATA rivals or engage in other anticompetitive conduct."[137] In particular, the Commission stated that "requiring a BOC interLATA affiliate to file its tariff with advance notice and cost support data might help

[134] *See* AT&T at 46-52; AmericaTel at 30 (dominant carrier regulation necessary "[a]t a bare minimum"); AWS at 16 (BOCs should be classified as dominant when providing long distance services on an integrated basis); MCI at 16 (dominant carrier regulation necessary unless long distance services are provided through a separate affiliate); Sage at 34-35 (dominant carrier regulation required if section 272 safeguards are removed); Vartec, Excel & Emeritus at 3 (requesting "dominant carrier regulation of the BOCs' in-region, long-distance services following sunset of the section 272 requirements"). *See also*, AHTUC at 21 (requesting safeguards including price cap regulation of BOC long distance services).

[135] *See MCI Telecommunications v. AT&T*, 114 S. Ct. 2223, 2225, 2231 (1994). *See also*, Selwyn Reply Dec. ¶ 72.

[136] *See WorldCom, Inc. v. FCC*, 238 F.3d 449, 454 (D.C. Cir. 2001); Order and Notice of Proposed Rulemaking, *Comsat Corp.*, 13 FCC Rcd. 14083, ¶ 153 (1998); Selwyn Dec., ¶¶ 6-8.

[137] *LEC Classification Order*, ¶ 87.

to detect and prevent predatory pricing, particularly if coupled with a price floor on the affiliate's interLATA services."[138]

This statement belies claims by SBC (p. 46) and the Qwest/SBC/Verizon economists (p. 36) that dominant carrier tariffing requirements do "not address predation concerns" and rather focus on preventing prices from being "too high." Instead, the requirement for cost support addresses all forms of anticompetitive pricing.[139] Dominant carrier regulation is also necessary to prevent the BOCs using their local services to subsidize their long distance services by misallocating costs.[140] Otherwise, as Dr. Selwyn has described, the BOC will use their monopoly services "to operate their competitive businesses *incrementally*," which would make it impossible for any IXC to compete on an equal basis.[141]

The Commission also considered in the *LEC Classification Order* "whether and to what extent these regulations would dampen competition and whether other statutory and regulatory provisions would accomplish the same objectives while imposing fewer burdens on the carriers and the Commission."[142] Predictably, the BOCs and their economists highlight the *LEC Classification Order* discussion of drawbacks associated with dominant carrier regulation, but they omit reference to the next key element in the Commission's analysis in that order, which was its finding that "*other regulations* applicable to the BOCs and their interLATA affiliates will

---

[138] *Id*.

[139] As noted above, and in AT&T's comments (pp. 49-50), to prevent BOCs from making anticompetitive use of their access cost advantage to price squeeze their rivals even if they priced above their own economic cost of access (but below the access charges paid by unaffiliated IXCs), BOC compliance with dominant carrier cost support requirements for access should be based on the imputed cost required by section 272(e)(3).

[140] AT&T at 50-51; Selwyn Dec., ¶¶ 88, 93.

[141] AT&T at 46-47 & Selwyn Dec., ¶ 91.

[142] *LEC Classification Order*, ¶ 87.

address the anticompetitive concerns raised in the Notice in a less burdensome manner."[143] In particular, the Commission relied on the safeguards provided by section 272.[144] Thus, the *LEC Classification Order* and the Notice (¶ 5) underscore that the present non-dominant treatment of the BOC long distance affiliates was "*predicated* upon their full compliance with the structural, transactional, and non-discrimination requirements of section 272 and [the Commission's] implementing rules."[145]

As AT&T has described (pp. 59-60), the sunset of section 272 removes substantial elements of those safeguards relied upon in the *LEC Classification Order* to act in lieu of dominant carrier regulation to prevent BOC anticompetitive leverage of the local bottleneck. Other regulatory safeguards relied upon in the *LEC Classification Order* have already been removed. As the result of the *Pricing Flexibility Order*, price cap regulation does not prevent BOCs from engaging in price squeezes by raising special access rates.[146] Further, Commission holdings that UNEs may be used only for long-distance access to IXCs' own local customers severely restrict this further safeguard against price squeezes cited by the *LEC Classification Order*.[147] And, as described above, other purported safeguards against bottleneck abuse listed in the BOC comments in this proceeding are patently inadequate.

Because of these significantly changed circumstances, the Commission's prior assessment of the relative benefits and burdens of dominant carrier regulation of BOC long

---

[143] *See* Carlton, Sider & Shampine Dec. at 38; BellSouth at 27; SBC at 4-5; Verizon at 28; *LEC Classification Order*, ¶ 91 (emphasis added).

[144] *Id.*, ¶¶ 91, 112-18. *See* AT&T at 58-62.

[145] *LEC Classification Order*, ¶ 134. *See also*, Sage at 32-34.

[146] AT&T at 61.

[147] *Id*. *See also*, *LEC Classification Order*, ¶¶ 126, 130.

distance affiliates is no longer relevant and requires revision. D.C. Circuit precedent requires the Commission to conform its former predictive judgment that the existence of other safeguards allowed nondominant treatment of those affiliates to reflect the very different circumstances that apply after sunset of section 272 and in light of the various other regulatory and market changes since 1997.[148] Under these different circustances, the public interest in the application of dominant carrier regulation to prevent leverage of BOC market power over local bottlenecks into the long distance market plainly "outweigh[s] the burdens," particularly as such regulation is necessary only pending the adoption of other reforms to limit the BOCs' ability to harm long distance competition in this way.[149]

Moreover, the Commission has made clear that where a carrier possesses market power, "the public interest in maintaining dominant carrier regulation . . . outweighs the burdens [the dominant carrier] might experience by complying with our dominant carrier regulations."[150] SBC's reliance (p. 5-6, n.7 & n.9) on language from the *Domestic Detariffing Order* is certainly beside the point because that order merely considered tariff filings by *nondominant* interexchange carriers.[151] Indeed, the Commission made clear in the *Domestic Detariffing Order* that the BOCs fell within "the purview of this Order" only "*if they are classified as nondominant*

[148] AT&T at 57-58, citing *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992)..

[149] *See* AT&T at 73-74; *LEC Classification Order*, ¶ 87 ("Dominant carrier regulation should be imposed on the BOC interLATA affiliates only if the benefits of such regulation outweigh the burdens that would be imposed on competition, service providers, and the Commission.").

[150] *Comsat Corp*., 13 FCC Rcd. 14083, ¶ 153 (upholding dominant carrier tariff filing requirements). *See also*, Selwyn Reply Dec. ¶ 79 (gains from continued competition resulting from dominant carrier regulation of BOC integrated long distance services are "easily worth whatever minimal 'burdens' may arise as a result).

[151] Second Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd. 20730 (1996).

in their provision of interstate, domestic, interexchange services."[152] Because the BOCs indisputably possess market power, the burdens entailed by the filing of tariffs by nondominant carriers are not relevant here.

IV. DOMINANT CARRIER REGULATION OR OTHER SAFEGUARDS ARE REQUIRED BY U.S. TRADE COMMITMENTS.

As AT&T has demonstrated (pp. 53-56), dominant carrier regulation or other regulatory safeguards preventing BOC anticompetitive abuse of their local bottlenecks are required by U.S. trade commitments in telecommunications under the WTO General Agreement on Trade in Services. Specifically, Section 1 of the Reference Paper requires the United States to maintain "[a]ppropriate measures . . . for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices."[153] A "major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services" resulting from either "control over essential facilities" or "use of its position in the market."[154] Accordingly, because the ILECs control essential facilities and thus have the ability to affect the market adversely, the Commission is required by the Reference Paper to maintain measures to prevent the ILECs "from engaging in or continuing anti-competitive practices." In the absence of the regulatory basis for the nondominant treatment adopted in the *LEC Classification Order*, the Commission is required by these WTO commitments to take

[152] *Id.*, ¶ 65.

[153] United States, Schedule of Specific Commitments, World Trade Organization, Fourth Protocol to the General Agreement on Trade in Services, GATS/SC/90/Suppl.2, Apr. 15, 1997, at 4. Anticompetitive practices "include in particular . . . engaging in anticompetitive cross-subsidization." *Id. See also, Foreign Participation Order*, ¶ 340.

[154] *Id. See also, Foreign Participation Order*, ¶ 340, n.693.

affirmative measures to prevent BOC abuse of the market power conferred by their local bottlenecks by requiring these major suppliers to provide long distance services supplied on an integrated basis in compliance with dominant carrier rules.

V. THE NEED FOR DOMINANT CARRIER REGULATION WOULD BE REMOVED BY THE ADOPTION OF REFORMS PREVENTING BOC LEVERAGE OF THE LOCAL BOTTLENECK INTO LONG DISTANCE SERVICES.

Competitive carriers also emphasize the need for additional safeguards to prevent BOCs from making anticompetitive use of their local exchange and exchange access market power if they provide long distance services on an integrated basis. Their comments support all of the essential reforms requested by AT&T: (1) removal of the BOCs' access cost advantage, (2) reduction of BOC special access rates to just and reasonable levels, (3) enforcement of performance measures preventing non-price discrimination in special access, and (4) independent PIC administration and the establishment of greater limits on joint marketing.

Intercarrier compensation reform is clearly critical. Z-Tel (p. 4) emphasizes that "[i]t is clear that competition will not develop if the incumbents' incremental cost of using their bottleneck facilities is less than what it charges for access to its competitors." Removal of the incumbents' unfair access cost advantage is necessary to create a level competitive playing field, encourage efficient facilities investment and use, and reduce BOCs' ability and incentives to engage in price squeezes and other anticompetitive cross-subsidization. As AHTCU underscores (p. 19), "[m]oving BOC rates for access services closer to cost-based levels not only would improve the allocative efficiency of the downstream toll markets and ultimately bring lower toll prices to end users, it would eliminate the ability of BOCs to effect an anticompetitive price squeeze on competitive toll carriers in the in-region long distance market."

MCI properly notes (p. 19) that the bottleneck abuse and unfair cost advantage provided by the present system will only be removed if all BOC access charges, including intrastate access charges, are set at cost-based levels. AT&T (p. 68) similarly urges the adoption of a uniform intercarrier compensation rule requiring forward-looking, economic cost-based pricing for all minutes terminated on all networks, irrespective of whether the call is jurisdictionally interstate or intrastate, and whether the carriers involved are LECs or IXCs.[155]

Commission action on special access rates is also critical. AHTUC (pp. 10-12 & 21) and AWS (pp. 14-16) emphasize that the Commission should revoke the special access pricing flexibility that BOCs have used to increase special access prices to excessive levels and create price squeezes for competitors and should reinitialize price caps designed to produce normal returns.[156] The Commission also should eliminate the use restrictions and ban on commingling that currently apply to pre-existing combinations of unbundled loops and transport and prevent competitors from converting special access circuits to UNEs at cost-based rates.[157]

---

[155] *See* Comments of AT&T, CC Docket No. 01-92, (filed Aug. 21, 2001).

[156] AT&T at 69-70. Additionally, immediate, interim relief is necessary to reduce all special access charges for services subject to Phase II pricing flexibility to the rates that would produce an 11.25 percent rate of return (the last authorized BOC rate of return), to make clear that any such rate reductions will not trigger any termination or other liability penalties, and to impose a moratorium on consideration of further pricing flexibility applications pending completion of the rulemaking. *Id.* *See also*, AT&T Petition for Rulemaking (filed Oct. 15, 2002), RM No. 10593, at 39-40.

[157] AT&T at 70. Under the current rules, competitive carriers are prohibited from converting any facility from special access service to UNEs unless all of the tails associated with the special access circuit meet a "local voice service" test. As the BOCs enter in-region interLATA markets after obtaining 272 relief and compete for enterprise customers, they have the ability and incentive to use above-cost special access services to engage in the anticompetitive conduct described above. Under section 272 safeguards, the BOCs are required to purchase the facility input on the same rates, terms and conditions as IXCs. However, when BOCs provide long distance services on an integrated basis after sunset of section 272, they can readily avoid the use restriction they impose on their competitors. The removal of all restrictions preventing the

(continued . . .)

The Commission should also address longstanding problems in BOC provisioning and support of special access by adopting strong performance measures and standards, supported by meaningful consequences for discriminatory and unreasonable performance. As urged by AT&T (pp. 70-71), AWS (pp. 15-16) and MCI (p. 23), the Commission should adopt the Joint Competitive Industry Group ("JCIG") Proposal under consideration in the *Performance Measurements and Standards for Interstate Special Access Services* proceeding, which sets forth performance measures, measurement calculations, business rules, exceptions, disaggregation levels and performance standards necessary to measure BOC performance in key areas.[158]

Another necessary safeguard is neutral administration of customer preferred carrier choices, changes and freezes to ensure that the BOCs can no longer use the PIC process to discriminate against their IXC competitors to advantage their own long distance operations.[159] New joint marketing restrictions also are needed to redress the BOCs' ability to leverage their dominance of the local market by marketing their long distance services to local customers calling to request additional local lines.[160] Customers requesting additional lines represent a

---

conversion of special access circuits to cost-based UNEs is necessary to ensure that all carriers are able to compete on a fair and equal basis.

[158] *See also*, Comments of AT&T Corp., Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321, filed Jan. 22, 2002. The existence of ARMIS reporting requirements does not mean that no additional special access performance measures and standards are necessary, as asserted by BellSouth (p. 14), because those reports do not provide all of the data necessary for full assessment of special access provisioning and provide no standards or remedy process for deficient performance. Competitive carriers make clear -- just as they have emphasized in the pending rulemaking on this issue -- that a new and effective federal performance assessment and remedy process is necessary to provide reasonable and nondiscriminatory access to essential inputs.

[159] AT&T at 71-72. *See also*, Working Assets at 7 (requesting retention of separate BOC long distance affiliates until independent third party PIC administration is established).

[160] AT&T at 72-73; MCI at 28.

significant market that also should be subject to joint marketing restrictions and are not materially different from customers requesting new service, where BOCs are presently required to provide nondiscriminatory treatment.[161]

As AT&T has described (p. 67), the adoption of all these essential reforms would provide a basis for nondominant treatment of BOC interLATA services. Although these reforms would not provide all the safeguards of section 272 or that would be provided by dominant carrier regulation of BOC long distance services, once they were fully carried out, they would remove the BOC access cost advantage and sufficiently limit non-price discrimination to allow the removal of dominant carrier regulation.

VI. EXISTING SEPARATION REQUIRMENTS FOR INDEPENDENT LECS SHOULD REMAIN IN PLACE.

AT&T has shown (pp. 74-76) that independent LECs should continue to be regulated as nondominant provided they continue to provide long distance services through a separate legal entity with separate books of account, no joint ownership of switching and transmission facilities with any affiliated local exchange company, and acquire any services from any affiliated local exchange company at tariffed rates, terms and conditions or on the same basis as requesting carriers that have negotiated interconnection agreements under section 251.[162] Continued nondominant treatment is warranted for incumbent independent LEC long distance services, notwithstanding their local bottlenecks, because they are generally less likely than

[161] AT&T at 72-73,

[162] *LEC Classification Order*, ¶162. Independent LECs providing long-distance services solely on a resale basis, with no use of their own switching or transmission facilities, may provide these services through a separate corporate division. *See* Second Order on Reconsideration and Memorandum Opinion and Order, *Regulatory Treatment of LEC Provision of Interexchange services originating in the LEC's Local Exchange Area*, 14 FCC Rcd. 10771, ¶ 22 (1999) (*LEC In-Region Interexchange Order)*.

BOCs to engage in price squeezes and other types of anticompetitive conduct against rival IXCs.[163]

The existing separation requirements will remain necessary for incumbent independent LECs until the Commission carries out the reforms described above to remove the incumbents' access cost advantage and limit their ability to engage in non-price discrimination.[164] As the Commission has repeatedly determined, independent LECs have the incentive and ability to leverage their local bottlenecks into the long distance market unless they are subject to effective safeguards.[165] And contrary to the claim by GVNWC (pp. 5-6), participation in the NECA pool does not preclude the possibility of anticompetitive pricing by an independent LEC. High NECA switched access rates still allow an independent LEC to price squeeze its IXC competitors by "set[ting] its in-region interexchange prices at or below its access prices," thus requiring rival IXCs to "lower[] their retail rates, thereby reducing their profit

[163] AT&T at 74-76. Independent LECs are geographically dispersed with relatively small service areas and customer bases, and most of their customers' long distance calls terminate on other carriers' networks, thus reducing the ability of any independent LEC to cost-price squeeze large regional and national long distance carriers. *See BellSouth Corp. v. FCC*, 162 F.3d 678, 689 (D.C. Cir. 1998) ("[B]ecause the BOCs' facilities are generally less dispersed than [those of other competitors], they can exercise bottleneck control over both ends of a telephone call in a higher fraction of cases than can [other competitors])." Further, given their relatively weak brands and marketing presence, independent LECs that attempt to discriminate against rivals are much less likely than the BOCs to gain customers as a result of discrimination.

[164] AT&T at 76.

[165] *See LEC Classification Order*, ¶ 159 ("absent appropriate and effective regulation, independent LECs have the ability and incentive to misallocate costs" from their long distance services to their monopoly local services), ¶ 160 (independent LEC could potentially engage in discrimination) & ¶ 161 ("We are also concerned that an independent LEC could potentially initiate a price squeeze to gain additional market share.") *See also*, *LEC In-Region Interexchange Order*, ¶ 19 (affirming that "LECs would be able to engage in anticompetitive behavior against competing IXCs by providing superior interexchange switching or transmission services to their own interexchange operations.").

margins, or maintaining their retail rates at the higher price and risk losing market share."[166] Moreover, even Sprint, which is an independent LEC as well as a leading IXC, is compelled to point out (p. 15) that maintenance of a separate affiliate is not "nearly so burdensome or astronomically costly" as some BOCs have claimed.

[166] *LEC Classification Order*, ¶ 161. GVNWC has it exactly backwards in contending (p. 6) that independent LECs with NECA access rates are disadvantaged in competing with IXCs. Because independent LECs avoid those originating access rates, they have a huge cost *advantage* in providing long distance services to their local service customers.

CONCLUSION

For the reasons described above and in AT&T's comments, the Commission should regulate BOC in-region interexchange services as dominant after sunset of the Commission's section 272 safeguards in a state until the Commission prevents BOC abuse of their local bottlenecks by completing essential reforms removing the BOCs' access cost advantage, reducing BOC special access rates to just and reasonable levels, establishing and enforcing performance measures preventing non-price discrimination, and limiting discrimination in the PIC process and through joint marketing. Independent LECs should remain subject to existing separation requirements.

Respectfully submitted,

AT&T Corp.

By __/s/James J.R. Talbot________________

Leonard J. Cali
Lawrence J. Lafaro
Stephen C. Garavito
James J.R. Talbot
Aryeh S. Friedman

One AT&T Way
Bedminster, N.J. 07921
(908) 532-1847

July 28, 2003

CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, hereby certify that on this 28th day of July, 2003, a copy of "AT&T's Reply Comments" was by first class mail to the persons listed below.

/s/ Theresa Donatiello Neidich
Theresa Donatiello Neidich

Colleen Boothby
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW – Suite 900
Washington, DC 20036
Counsel for Ad Hoc Telecommunications Users Committee

Judith L. Harris
Robert H. Jackson
Reed Smith LLP
1301 K Street, NW
Suite 1100-East Tower
Washington, DC 20005
Counsel for Americatel

Douglas I. Brandon
Vice President-External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue NW – Suite 400
Washington, DC 20036

Michael H. Pryor
Catherine Carroll
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
701 Pennsylvania Avenue NW – Suite 900
Washington, DC 20004
Counsel for AT&T Wireless

Angela N. Brown
BellSouth Corporation
Suite 4300
675 West Peachtree Street, NE
Atlanta, GA 30375

Richard R. Cameron
Tonya Rutherford
Latham & Watkins LLP
555 Eleventh Street, NW – Suite 1000
Washington, DC 20004
Counsel for The Independent Telephone & Telecommunications Alliance

David W. Zesiger
Executive Director
The Independent Telephone & Telecommunications Alliance
1300 Connecticut Avenue, NW – Suite 600
Washington, DC 20036

Ava-Marie Madeam
State of New Jersey
Division of Ratepayer Advocate
31 Clinton Street – 11th Floor-PO Box 46005
Newark, NJ 07101

Donald J. Elardo
Kraskin Lesse & Cosson, LLC
2120 L Street, NW – Suite 520
Washington, DC 20037
Counsel for Coalition of Incumbent Independent Local Exchange Carriers

L. Marie Guillory
Jill Canfield
National Telecommunications Cooperative Association
4121 Wilson Boulevard – 19th Floor
Arlington, VA 22203

David Clark
GVNW Consulting, Inc
8050 SW Warm Springs Street – Suite 200
Tualatin, OR 97062

Richard Juhnke
Sprint Corporation
401 9th Street, NW – Suite 400
Washington, DC 20004

Sharon J. Devine
James T. Hannon
Qwest Services Corporation
607 14th Street, NW – Suite 950
Washington, DC 20005

Roger B. Borgelt
Assistant Attorney General
Consumer Protection Division
Public Agency Representation Section
PO Box 12548
Austin, TX 78711-2548

Jonatha E. Canis
Eric C. Soriano
Kelley Drye & Warren LLP
1200 19th Street, NW – 5th Floor
Washington, DC 20036
Counsel for Sage Telecom, Inc.

Robert W. McCausland
Vice President, Regulatory Affair
Sage Telecom, Inc.
805 Central Expressway South – Suite 100
Allen, TX 75013-2789

Rebecca Klein, Chairman
Brett A. Perlman, Commissioner
Julie Parsley, Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, TX 78711-3326

Lawrence E. Sarjent
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tutle
United States Telecom Association
1401 H. Street, NW – Suite 600
Washington, DC 20005

Paul K, Mancini
Gary L. Phillips
Anu Seam
SBC Communications, Inc.
1404 Eye Street, NW – Susie 400
Washington, DC 20005

Michael E. Glover
Edward Shakin
Joseph DiBella
VERIZON
1515 No Court House Road-Suite 500
Arlington, VA 22201-2909

Wm. Randolph Smith
Robert M. Halperin
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Counsel for SBC Communications, Inc.

Jeffre S. Linder
Melissa A. Reed
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
Counsel for VERIZON

Craig T. Smith
Sprint Corporation
6450 Sprint Parkway
Overland Park, KS 66251

Theresa L. Cabral
Morrison & Foerster LLP
101 Ygnacio Valley Road – Suite 450
Walnut Creek, CA 94596
Counsel for Working Assets Long Distance

James P. Tobin
Mary E. Ward
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Counsel for Working Assets Long Distance

Michele C. Farquhar
David L. Sieradzki
Ronnie London
Hogan & Hartson, LLP
555 – 13th Street, NW
Washington, DC 20554
Counsel for Competitive Universal
Service Coalition

Alan Buzacott
Lorie E. Wright
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Thomas M. Koutsky
Z-Tel Communications, Inc.
1200 19th Street, NW – Suite 500
Washington, DC 20036

Christopher J. Wright
Timothy J. Simeone
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, DC 20036
Counsel for Z-Tel Communications, Inc.